

**At a Stated Term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York, on the 27<sup>th</sup> day of September, two thousand ten,**

**PRESENT:** Dennis Jacobs,  
Chief Judge  
José A. Cabranes  
Rosemary S. Pooler  
Robert A. Katzmann  
Reena Raggi  
Richard C. Wesley  
Peter W. Hall  
Debra A. Livingston  
Gerard E. Lynch  
Denny Chin,  
Circuit Judges

**IT IS HEREBY ORDERED**, that the Local Rules of the United States Court of Appeals for the Second Circuit, as amended, are hereby proposed for public comment pursuant to 28 U.S.C. § 2071(b) and Fed. R. App. P. 47(a)(1). The Clerk of Court shall receive comments submitted by October 27, 2010. Anyone wishing to comment should do so, in writing, to:

Catherine O'Hagan Wolfe  
Clerk of Court  
United States Court of Appeals  
for the Second Circuit  
40 Foley Square  
New York, New York 10007  
or  
Email: [rulescomments@ca2.uscourts.gov](mailto:rulescomments@ca2.uscourts.gov).

F O R   T H E   C O U R T

S/S \_\_\_\_\_  
Catherine O'Hagan Wolfe  
Clerk of Court

**LOCAL RULES AND INTERNAL OPERATING PROCEDURES  
OF  
THE COURT OF APPEALS FOR THE SECOND CIRCUIT  
(Effective January 1, 2010)**

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**LOCAL RULES**

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**Local Rule 1.1 Scope and Organization**

These local rules (LRs) and internal operating procedures (IOPs) are adopted in accordance with 28 U.S.C. § 2071 and Rule 47 of the Federal Rules of Appellate Procedure (FRAP). To the extent practical, LRs and IOPs are numbered and titled to correspond to FRAP. When there is no FRAP counterpart: (1) an LR is numbered to correspond to FRAP 47, and (2) an IOP is lettered A, B, C, etc., and is located at the end of the LRs. In addition, counsel and parties should consult the court's instructions and practice guidelines available from the clerk's office and on the court's website.

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**Local Rule 4.1 Continuation of Counsel in Criminal Appeals**

- (a) **Continuation of Counsel.** ~~When a defendant in a~~A criminal case seeks to appeal, defendant's counsel, whether retained or appointed, is responsible for representing the defendant on appeal unless relieved by this court. This responsibility includes complying with FRAP and all LRS and IOPs.
- (b) **Motion to Withdraw – Frivolousness of Appeal.** Counsel who seeks to withdraw from representing a defendant on appeal on the ground that the appeal presents no non-frivolous issues must file a motion and brief in accordance with *Anders v. California*, 386 U.S. 738 (1967), subsequent case law, and this court's instructions.
- (c) **Motion to Withdraw – Adverse Decision.** Within 14 days after a decision by this court that is adverse to the defendant, appointed counsel may file a motion in this court to be relieved of the obligation to file a petition for a writ of certiorari with the U.S. Supreme Court if counsel has reasonable grounds to believe that the petition would have no likelihood of success. The motion must be accompanied by proof of service on the defendant and the government. The motion must also state that counsel has explained to the defendant how to file a timely petition for certiorari pro se.

(d) **Motion to Withdraw – Other Grounds.** Counsel who seeks to withdraw from representing a defendant on appeal on other grounds must proceed by motion as follows:

- (1) **Advice to Defendant.** Before moving to withdraw as appellate counsel, counsel must advise the defendant that (A) the defendant must promptly obtain other counsel unless the defendant desires to appear pro se, and (B) if the defendant is financially unable to obtain counsel, this court may appoint counsel under the Criminal Justice Act, 18 U.S.C. 3006A (CJA). If the defendant desires to appear pro se, counsel must advise the defendant in writing of the deadlines for docketing the record and filing the brief. If the defendant is represented by retained counsel and seeks appointment of new counsel on appeal, retained counsel must ensure that the defendant receives and completes the appropriate application forms.
- (2) **Content of Motion.** A motion to withdraw must state the reasons for such relief and must be accompanied by one of the following:
  - (A) a document or statement showing that new counsel has been retained or appointed to represent the defendant;
  - (B) the defendant’s completed application for appointment of counsel under the CJA or a showing that the defendant has already filed that application with the court;
  - (C) if the defendant is currently represented by appointed counsel, a request that substitute counsel be appointed under the CJA;
  - (D) the defendant’s signed statement that the defendant has been advised that the defendant may retain new counsel or apply for appointment of counsel, and that the defendant does not wish to be represented by counsel but wishes to appear pro se; or
  - (E) a document or statement showing that exceptional circumstances prevent counsel from meeting any of the requirements stated in (A) to (D) above.
- (3) **Procedure.** A motion to withdraw (A) must be accompanied by proof of service on the defendant and the government, and (B) is determined in accordance with FRAP 27.
- (4) **Counsel Not Admitted to This Court.** Counsel not admitted to this court who seeks to withdraw under (d) must contact the clerk’s office before filing the motion.

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## **Local Rule 4.2 Duties Regarding Trial Court Motions**

A party who has filed a notice of appeal must promptly notify this Court when a motion referenced in FRAP 4(a)(4), 4(b)(3), or 6(b)(2) is filed, and must notify this court within 14 days after entry of the order disposing of the last such remaining motion.

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## **Local Rule 6.1 Rules Applicable in Bankruptcy Cases**

Second Circuit LRs and IOPs applicable to civil appeals are applicable in bankruptcy cases.

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## **Local Rule 11.1 Duties Regarding the Record**

- (a) **Record Retained by District Clerk.** In all counseled appeals other than those described in (b), the district clerk retains the record on appeal, subject to FRAP 11(e), and forwards to the circuit clerk, within 14 days after the filing of the notice of appeal, a certified copy of the index of docket entries instead of the entire record. The appellant must do whatever is necessary to enable the district clerk to comply with this rule ~~within 14 days after the filing of the notice of appeal.~~
- (b) **Appeal on Original Record.** An appellant authorized to appeal on the original record without an appendix in accordance with LR 30.1(e) must do whatever is necessary to enable the district clerk to send to the circuit clerk all relevant parts of the record, including transcripts and, if any, the certified administrative record.
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## **Local Rule 11.2 Exhibits Retained by the Parties**

If a party has retained custody of an exhibit offered or admitted in the district court, but has not filed the exhibit in any format with the district clerk, that party must continue to retain custody of the exhibit until this court issues the mandate, and must make it available if requested by the court or a party.

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## **Local Rule 11.3 Duty of Court Reporters**

- (a) **Transcript Order Acknowledgments.** Upon receipt of a transcript information form (Form B in criminal appeals, Form D in counseled civil appeals, and Form D-P in pro se civil appeals), the court reporter must promptly complete the acknowledgment section

and send it to the circuit clerk. If an appellant has ordered a transcript, the reporter's acknowledgment must include an estimated completion date, which date must be no later than 30 days after receipt of the transcript order form.

**(b) Extension of Time.**

**(1) Court Reporter's Duty to Seek.** A court reporter seeking an extension of time for filing the transcript must file an extension request with the circuit clerk and must serve the request on all parties. The request must specify the date of receipt of the transcript order, the proposed completion date, the amount of work that remains to be performed, the reasons for the delay, whether the reporter has previously sought an extension of time, and whether any prior order stated that no further extension would be allowed.

**(2) Clerk's Duties.** The circuit clerk must send to the reporter and all parties a copy of the order deciding a request for an extension.

**(c) Reporter's Default.** If the reporter does not file the transcript within the 30-day period, or any extension of that period, the appellant must notify the circuit clerk in writing, and must update the circuit clerk in 14-day intervals until the transcript is filed. The circuit clerk must notify the district judge, and take appropriate measures to obtain the reporter's compliance.

**(d) Reduction of Fees.** In accordance with the U.S. Judicial Conference resolution that mandates penalties for late delivery of a transcript, the following fee reductions apply:

**(1)** for a transcript not delivered within 30 days after receipt of the order, the reporter may charge only 90 percent of the prescribed fee;

**(2)** for a transcript not delivered within 60 days after receipt of the order, the reporter may charge only 80 percent of the prescribed fee; and

**(3)** for a transcript delivered within the time permitted by an extension granted under (b), the fee reductions set forth in this paragraph apply unless the extension order states that good cause exists for the reporter's delay and waives the fee reduction.

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**Local Rule 12.1 Appeal Docketing Requirements in Civil and Agency Cases**

**(a) Timing.** All actions required under this rule must be completed within 14 days after the filing of a notice of appeal or a petition or application under FRAP 15, or the entry of an order granting permission to appeal under FRAP 5.

**(b) Docketing Requirements.**

- (1) Counseled Civil Cases.** A counseled appellant in a civil case must file Form C, Civil Appeal Pre-Argument Statement, along with the addenda required by this form; and Form D, Civil Appeal Transcript Information Form.
- (2) Pro Se Civil Cases.** A pro se appellant in a civil case must file Form D-P, Civil Appeal Transcript Information Form for Pro Se Appellants.
- (3) Counseled Agency Cases.** A counseled appellant in an agency case must file Form C-A, Agency Appeal Pre-Argument Statement, along with the addenda required by this form.

**(c) Docketing Fee.** An appellant or petitioner must pay the docketing fee fixed by the U.S. Judicial Conference under 28 U.S.C. § 1913, unless the appellant or petitioner is seeking or has obtained leave to proceed in forma pauperis under 28 U.S.C. § 1915 and FRAP 24, and so notifies the circuit court.

**(d) Failure to Comply.** Failure to take any of the above actions may result in dismissal of the appeal.

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**Local Rule 12.2 Appeal Docketing Requirements in Criminal Cases**

**(a) Docketing Requirements.** Within 14 days after the filing of a notice of appeal, an appellant in a criminal appeal must:

- (1)** file Form B, Criminal Appeal Transcript Information Form; and
- (2)** pay the docketing fee fixed by the U.S. Judicial Conference under 28 U.S.C. § 1913, unless the appellant ~~is seeking~~ has moved or ~~has~~ obtained leave to proceed in forma pauperis under 28 U.S.C. § 1915 and FRAP 24, and so notifies the circuit court.

**(b) Failure to Comply.** Failure to take any of the above actions may result in dismissal of the appeal.

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**Local Rule 12.3 Acknowledgment and Notice of Appearance in All Appeals**

**(a) Acknowledgment and Notice of Appearance Form.** Within 14 days after receiving a docketing notice from the circuit clerk assigning a docket number and enclosing a copy of the appellate docket sheet, all parties must file the Acknowledgment and Notice of

Appearance Form. Counsel of record listed on the form must be admitted in this court, or have pending an application for admission under LR 46.1(a) or (d). This form satisfies the requirement of FRAP 12(b).

- (b) **Notice of Appearance Form for Substitute, Additional, or Amicus Counsel.** An attorney, other than the initial counsel of record, who appears in a case in any capacity on behalf of a party or an amicus curiae must file the Notice of Appearance Form for Substitute, Additional, or Amicus Counsel at the time the attorney enters the case.
- (c) **Failure to Comply.** The appellant's failure to take any of the above actions may result in dismissal of the appeal. The appellee's failure to take any of the above actions may bar the appellee from being heard on the appeal.

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### **Local Rule 21.1 Writs; Number of Paper Copies**

~~A petitioner must file an original and 2 copies of a~~If the petition for a writ of mandamus or prohibition or other extraordinary writ exceeds 50 pages, the petitioner must submit 3 paper copies of the petition to the clerk's office.

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### **Local Rule 22.1 Certificate of Appealability**

- (a) **Request to This Court for a COA.** In a case governed by 28 U.S.C. § 2253 and FRAP 22(b), this court will not act on a request for a certificate of appealability (COA) unless the district court has denied a COA. If the district court denies a COA, the applicant must, within 28 days after the later of that denial or the filing of the notice of appeal, request a COA in this court. The request must include a copy of the district judge's order denying the COA, and a statement that (1) identifies each issue that the applicant intends to raise on appeal and the relevant facts, and (2) makes a substantial showing of a denial of a constitutional right as to each issue. A request to this court for a COA is decided without oral argument. The court ordinarily limits its consideration of the request to the issues identified in the request. The appeal may not proceed unless a COA has been issued.
- (b) **Timing.** If a COA issues, the later of that date or the filing of the notice of appeal serves as the date of the notice of appeal for calculating time under FRAP and these Local Rules.

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### **Local Rule 22.2 Second or Successive Applications Under § 2254 or § 2255**

- (a) **Transfer Required.** When an unauthorized second or successive application under 28

U.S.C. § 2254 or § 2255 is filed in district court, the district court will transfer it to the circuit court in accordance with 28 U.S.C. § 1631.

- (b) **Notice to Applicant.** Upon transfer under (a), this court will send a notice to the applicant that the applicant must, within 45 days after the notice date, move in the circuit court for authorization under 28 U.S.C. § 2244 to file a second or successive application.
- (c) **Motion Contents.** Any motion for authorization to file a second or successive application under 28 U.S.C. § 2254 or § 2255 must (1) use the appropriate Second Circuit form, and (2) attach copies of all prior applications for § 2254 or § 2255 relief and any resulting district court decisions, including any written opinions.
- (d) **Failure to Comply.** Failure to comply with any of these requirements may result in denial of the motion.

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### **Local Rule 24.1 Motion for In Forma Pauperis Status and Related Relief**

A motion for leave to appeal in forma pauperis, for appointment of counsel, or for a transcript at public expense must include (1) the affidavit prescribed by FRAP 24(a)(1), and (2) a statement that identifies the relevant facts and makes a showing of likely merit as to each issue the appellant intends to present on appeal. Failure to comply with any of these requirements may result in denial of the motion and dismissal of the appeal.

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### **Local Rule 25.1 Case Management/Electronic Case Filing (CM/ECF) [Effective January 20, 2010]**

- (a) **Definitions and Scope.**
  - (1) **Definitions.**
    - (A) **Document.** “Document” means any paper submitted to the court in a case.
    - (B) **PDF.** “PDF” means the electronic version, in Portable Document Format, of a document submitted to the court.
    - (C) **Initiating Document.** “Initiating document” means any document, including a petition for review of an agency decision, petition for a writ of mandamus, successive habeas petition, or motion for leave to file an appeal, filed directly in this court to initiate a proceeding seeking

consideration by this court.

**(D) Filing User.** “Filing User” means anyone who registers to file electronically under (b).

**(E) Sealed Document.** “Sealed document” means all or any portion of a document placed under seal by order of a district court or an agency or by order of this court upon the filing of a motion.

**(2) Scope.** This rule applies to all appeals filed on or after January 1, 2010 (i.e., appeals with a docket number beginning with “10-” or higher).

**(b) Registration.**

**(1) Attorneys.** An attorney admitted to practice in this court must register as a Filing User with PACER, the service that provides on-line access to United States appellate, district, and bankruptcy court records and documents nationwide.

**(2) Pro se parties.** A pro se party who wishes to file electronically must seek permission from the court by filing the court’s CM/ECF Pro Se Filing User Request Form available on the court’s website. A pro se party must register as a Filing User with PACER as soon as practicable after receiving permission ~~from the court to file electronically.~~

**(c) Electronic Filing Requirements.**

**(1) Documents Other than Initiating Documents.** A Filing User must file every document, other than an initiating document, electronically in PDF in accordance with the CM/ECF instructions posted on the court’s website.

**(2) Initiating Documents.** A Filing User must file an initiating document in PDF by emailing it to <[newcases@ca2.uscourts.gov](mailto:newcases@ca2.uscourts.gov)>.

**(d) Timing of Electronic Filing.**

**(1) Documents Filed in CM/ECF.** A document filed electronically in CM/ECF is considered filed as of the date and time indicated on the notice of docket activity (“NDA”) that the court automatically generates following the filing transmission.

**(2) Initiating Documents.** An initiating document filed electronically under (c)(2) is considered filed as of the date and time indicated on the email submission.

**(3) Technical Failure.** Upon motion, the clerk may ~~deem~~ accept as timely filed a

document untimely filed as the result of a technical failure ~~to be timely filed.~~

(e) **Format.** A PDF must be text-searchable. A PDF need not include a manual signature.

(f) **Signature.** A Filing User's personal log-in and password constitute the Filing User's signature for any purpose for which a signature is required.

(g) **Filing Submission of Paper Copies.** -

~~(1) **Brief and Appendix.** In addition to filing a brief and appendix electronically under this rule, a Filing User must separately submit the requisite number of paper copies prescribed under LR 30.1(b) and 31.1.~~

~~(2) **Other Documents.** Unless the clerk requests or the relevant LR requires, and notwithstanding FRAP provisions addressing number of copies, a Filing User must not submit a paper copy of a document, ~~other than a brief or an appendix.~~~~

(h) **Service.**

(1) **Acceptance of Service.** Registration as a Filing User constitutes consent to electronic service of all documents.

(2) **Documents Filed in CM/ECF.** A document filed in CM/ECF is ~~deemed~~considered served upon another Filing User when that Filing User receives the NDA. A Filing User satisfies FRAP 25(d)'s proof of service requirements by completing the "service" section in CM/ECF when filing a document.

(3) **Initiating Documents.** A Filing User must serve an initiating document on another Filing User by email.

(4) **Paper Copies.** Service of a paper copy of a document is not required unless the recipient is not a Filing User and has not consented to other service.

(i) **Hyperlinks.** A document filed under this rule may contain hyperlinks to (i) other portions of the same document or to other documents filed on appeal; (ii) documents filed in the lower court or agency from which the record on appeal is generated; and (iii) statutes, rules, regulations, and opinions. A hyperlink to a cited authority does not replace standard citation format.

(j) **Exemptions.**

(1) **Counsel.** Upon motion and a showing of extreme hardship or exceptional circumstances, the clerk may exempt counsel in a particular case from the

electronic filing requirements. If the clerk grants counsel an exemption, the clerk will determine the manner of filing and service.

(2) **Sealed Documents.** A sealed document or a document that is the subject of a motion to seal is exempt from the electronic filing requirement and must be filed with the clerk in the manner the court determines.

(3) **Oversized Documents.** A document that exceeds 10 megabytes in size and cannot be reasonably divided into ~~multiple attachments in accordance with the CM/ECF instructions posted on the court's website~~ 10 or fewer separate parts, each not exceeding 10 megabytes in size, is exempt from the electronic filing requirement. The oversized document qualifying for the exemption must be filed on CD or DVD.

(A) Under this rule each volume of a multi-volume appendix constitutes a separate document.

(B) If any one volume of a multi-volume appendix qualifies for exemption from electronic filing, the entire appendix must be filed on CD or DVD. Each volume of a multi-volume appendix included in a CD or DVD must be identified as a separate, clearly-labeled document. (Example: Vol. 1 (1-300); Vol 2 (301-600).)

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## **Interim-Local Rule 25.2 Submission of PDF Documents**

(a) **Definitions and Scope.**

(1) **Definitions.** For the purpose of this ~~interim~~ rule, the following definitions apply:

(A) “Document” means any paper (~~including any letter or motion~~) submitted to the court in a case, other than an appendix as covered in (h).

(B) “PDF” has the same meaning as defined in LR 25.1(a)(1)(B).

(2) **Scope.** This rule applies to all appeals filed before January 1, 2010 (i.e., appeals with a docket number beginning with “09-” or lower), and any other appeal in which counsel is exempt from filing electronically or a pro se party does not file electronically under LR 25.1.

(b) **PDF Requirement.**

(1) **Counseled Parties.** In addition to filing the ~~required number of paper~~

~~copies~~original document, a counseled party must submit a PDF of every document unless counsel explains why submitting a PDF of the particular document would constitute extreme hardship.

- (2) **Pro Se Parties.** A party not represented by counsel is encouraged, but not required, to submit a PDF of every document, in addition to filing the ~~required number of paper copies~~original document.
  - (3) **Format.** Each PDF must be text-searchable. A PDF need not include a manual signature.
  - (4) **Submission of Paper Copies.** Unless the clerk requests or the relevant local rule requires, and notwithstanding FRAP provisions addressing number of copies, a party must not submit a paper copy of a document other than the original.
- (c) **Email Submission.** A party must email a PDF to the electronic mailbox designated in (d).
- (1) **Email Subject Line.** The email must include the following information in the header’s “Subject” or “Re” line:
    - (A) the docket number; if a docket number has not yet been assigned, the (i) the name of the district court or agency appealed from, and (ii) the district court docket or agency number;
    - (B) the party’s name;
    - (C) the party’s designation in the case (e.g., appellant, petitioner);
    - (D) the type of document (e.g., form, letter); and
    - (E) the date of submission.
- Example of a proper subject line:  
# 01-2345-cv, ABC Corp, Appellant, Letter, 01/02/09.
- (2) **Single Email Per Submission.** When a party submits a set of documents that are intended to be considered together, the party must submit the PDFs of all those documents in a single email.
  - (3) **Single PDF for Motion.** A party submitting a motion must incorporate the Form T-1080 Motion Information Statement, the memorandum of law, and all supporting documents into a single PDF.

**(d) Electronic Mailboxes.**

- (1) New Cases.** In new cases in which the circuit clerk has not yet issued a docketing notice, a counseled party must, and a pro se party may, submit a PDF to [<newcases@ca2.uscourts.gov>](mailto:newcases@ca2.uscourts.gov).
  - (2) Cases Involving Only Counseled Parties.** After the clerk has issued a docketing notice in a case involving only counseled parties, a counseled party must submit a PDF to the appropriate electronic mailbox, as determined by the two-letter case-type code at the end of the docket number, and subject to the following descriptions:

    - (A)** ag, bk, op – [<agencycases@ca2.uscourts.gov>](mailto:agencycases@ca2.uscourts.gov) – cases in which all parties have counsel and that involve an administrative agency, board, commission or office; tax court; bankruptcy; or original proceedings;
    - (B)** cr – [<criminalcases@ca2.uscourts.gov>](mailto:criminalcases@ca2.uscourts.gov) – criminal cases in which all parties have counsel;
    - (C)** cv – civil cases

      - (i)** [<agencycases@ca2.uscourts.gov>](mailto:agencycases@ca2.uscourts.gov) – civil cases in which all parties have counsel and one party is the United States or an official or agency of the United States;
      - (ii)** [<civilcases@ca2.uscourts.gov>](mailto:civilcases@ca2.uscourts.gov) – all other civil cases in which all parties have counsel; and
    - (D)** pr – [<priscases@ca2.uscourts.gov>](mailto:priscases@ca2.uscourts.gov) – prisoner cases.
  - (3) Cases Involving a Pro Se Party.** After the clerk has issued a docketing notice in a case involving one or more pro se parties, a counseled party must, and a pro se party may, submit a PDF to: [<prosecases@ca2.uscourts.gov>](mailto:prosecases@ca2.uscourts.gov), except that in a case involving a pro se prisoner, a counseled party must, and a pro se party may, submit a PDF to [<priscases@ca2.uscourts.gov>](mailto:priscases@ca2.uscourts.gov).
- (e) Time for Email Submission.** A party must email the PDF no later than the time for filing the ~~required paper copies~~original.
  - (f) Corrections.** If a party corrects a document that has been submitted as a PDF, the party must also email a corrected PDF. The email subject line must identify the document as a corrected version and set forth the information required in (c)(1) with the submission date

of the corrected version.

- (g) **Email Service.** A party submitting a PDF must also email it to all counseled parties and to pro se parties who have submitted PDFs.
- (h) **PDF Submission of ~~Appendices~~an Appendix.** In addition to filing the required number of paper copies, a counseled party must submit and serve on all parties a text-searchable PDF of every appendix on CD or DVD, unless counsel explains why submitting a PDF of the appendix would constitute extreme hardship. A party not represented by counsel is encouraged, but not required, to submit and serve a PDF of the appendix on CD or DVD, in addition to filing the required number of paper copies. Each volume of a multi-volume appendix included in a CD or DVD must be identified as a separate, clearly-labeled document. (Example: Vol. 1 (1-300); Vol 2 (301-600).)
- (i) **PDF Not Provided; Unbound Copy Required.** A party who does not provide a PDF must file with the clerk one unbound copy of each document. The party may not staple or otherwise attach the unbound copy, but may use clips or rubber bands. When a party files only the original document and no copies, the original must be unbound.

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### Local Rule 25.3 Additional Paper Copies

When the clerk requests, a party must provide additional paper copies of any document filed.

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### Local Rule 27.1 Motions

- (a) **~~Form and, Contents, Number of Motion~~Paper Copies.**
  - (1) **Form.** MA motion papers must be in the form prescribed by FRAP 27.
  - (2) **Motion Information Statement.** The first page of the motion must be this court's Form T-1080 Motion Information Statement.
  - (3) **Attachments.** A movant must attach to Form T-1080 any affidavit or other document necessary to support the motion, and may attach a memorandum of law that complies with the page limits of FRAP 27(d)(2).
  - (4) **Number of Copies.** ~~An original and 2 copies of all motion papers must be filed~~Paper Copies. If the motion exceeds 50 pages, the movant must submit 3 paper copies of the motion to the clerk's office.

- (b) **Notification; Disclosure of Opponent’s Position.** In a case in which all parties are represented by counsel, a motion must state: (1) that the movant has notified opposing counsel, or why the movant was unable to do so; (2) opposing counsel’s position on the relief requested; and (3) whether opposing counsel intends to file a response to the motion.
- (c) **Authority of Clerk to Decide Motions.** The clerk is authorized to decide routine, unopposed procedural motions.
- (d) **Emergency Motions.** A motion seeking emergency or expedited relief must:
- (1) be preceded by as much advance notice as possible to the clerk and to opposing counsel of the intent to file an emergency motion;
  - (2) be labeled “Emergency Motion”;
  - (3) state the nature of the emergency and the harm that the movant will suffer if the motion is not granted; and
  - (4) state the date by which the movant believes the court must act.
- (e) **Motion to File Oversized Brief.**
- (1) **Motion Disfavored.** The court disfavors motions to file a brief exceeding the length permitted by FRAP 32(a)(7).
  - (2) **Explanation Required.** A party seeking to file an oversized brief must state the requested length and the reasons for exceeding FRAP’s limitations.
  - (3) **Time to File.** A motion to file an oversized brief must be made at least 14 days before the brief is due. The court will deny an untimely motion absent extraordinary circumstances.
- (f) **Motion to Extend the Time to File a Brief.**
- (1) **Extraordinary Circumstance Required.** Absent an extraordinary circumstance, such as serious personal illness or death in counsel’s immediate family, the court will not grant a motion to extend the time to file a brief. A deadline for a brief remains in effect unless the court orders otherwise.
  - (2) **Prior Motion.** A party seeking to extend the time to file a brief must disclose any prior motion for similar relief, the court’s ruling on it, and whether any prior order stated that no further extension would be allowed.

- (3) **Time to File.** A party seeking to extend the time to file a brief must move as soon as practicable after the extraordinary circumstance arises.
- (g) **Reconsideration of Orders.** A motion for reconsideration of an order under FRAP 27(b) must be filed within 14 days after the date of the order. Response papers filed after the original motion was decided do not constitute a request to reconsider; a separate motion requesting that relief must be filed.
- (h) **Sanctions.** The court may, after affording the party notice and an opportunity to be heard, impose sanctions against a party that fails to comply with this rule.

### **IOP 27.1 Oral Argument on Motions**

If the court orders oral argument on a motion, the motion will ordinarily be heard on a Tuesday when the court is in session. If the court orders oral argument on an Emergency Motion, the clerk may set a hearing on any day the court is in session.

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### **Local Rule 27.2 Certification of Questions of State Law**

- (a) **General Rule.** If state law permits, the court may certify a question of state law to that state's highest court. When the court certifies a question, the court retains jurisdiction pending the state court's response to the certified question.
  - (b) **Motion or Request.** A party may move to certify a question of state law by filing a separate motion or by including a request for certification in its brief.
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### **Local Rule 28.1 Briefs**

- (a) **Form of Brief.** A brief must be concise, logically arranged with proper headings, and free of irrelevant matter. The court may disregard a brief that does not comply with this rule.
  - (b) **Appellant's Brief.** In the statement of the case, an appellant's brief must name the judge or agency official who rendered the decision appealed from and cite the decision or supporting opinion, if reported.
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### **Local Rule 29.1 Brief of an Amicus Curiae**

- (a) **Leave to File.** The court ordinarily will deny leave to file an amicus brief when, by

reason of a relationship between a judge assigned to hear the proceeding and the amicus curiae or its counsel, the filing of the brief might cause the recusal of the judge.

- (b) **Disclosure.** Unless filed by an amicus curiae listed in the first sentence of FRAP 29(a), a brief filed under FRAP 29 must disclose in the first footnote on the first page:
- (1) whether a party's counsel authored the brief in whole or in part;
  - (2) whether a party or a party's counsel contributed money that was intended to fund preparing or submitting the brief; and
  - (3) the identity of every person – other than the amicus curiae, its members, or its counsel – who contributed money that was intended to fund preparing or submitting the brief.

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### Local Rule 30.1 Appendix

- (a) **Contents of Appendix.** The contents of an appendix are limited to the materials set forth in FRAP 30(a)(1), except that the appendix must also include the notice of appeal or petition for review.
- (b) **Number of Paper Copies.** In all cases, a party must ~~file~~submit 3 paper copies of its appendix.
- (c) **Deferred Appendix.** If the parties stipulate, or if the court on motion directs, the parties may file a deferred appendix as provided in FRAP 30(c).
- (d) **Index for Separate Volume of Exhibits.** When reproducing exhibits in a separate volume, the index required by FRAP 30(e) must include a description of each exhibit sufficient to inform the court of its nature; designation solely by exhibit number or letter does not comply with this rule.
- (e) **Proceeding on the Original Record Without an Appendix.**
- (1) **Authorized Classes of Cases.** The procedure described in FRAP 30(f) for hearing appeals on the original record without requiring an appendix is authorized in the following classes of cases: (A) proceedings conducted in forma pauperis, (B) social security cases, and (C) immigration cases listed in LR 34.2(a)(1).
  - (2) **Materials to be Included in the Record.** The appellant must arrange to make part of the record all relevant transcripts and, in social security cases, the certified administrative record.

- (3) **Materials to be Attached to Appellant’s Brief.** The appellant must attach as an addendum to its principal brief the orders, opinions, and judgments being appealed.
- (f) **Sanctions.** This court may, after affording the attorney notice and an opportunity to be heard, impose sanctions against an attorney who unreasonably and vexatiously increases litigation costs by including unnecessary material in the appendix.

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**Local Rule 31.1 Brief; Number of Paper Copies of Brief to be Filed with Clerk**

In all cases, a party must ~~file~~submit 6 paper copies of each brief.

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**Local Rule 31.2 Briefing Schedule; Failure to File Regular and Expedited Appeals Calendars**

- (a) **Briefing Schedule.** The parties must submit scheduling requests for filing briefs in accordance with the procedures described below. The court ordinarily sets and “so orders” the requested deadlines as the firm filing dates for the parties’ briefs.
- (1) **Scheduling Request.**
- (A) **Appellant’s Request.** Within 14 days after the later of the appellant’s receipt of the last transcript, the appellant’s filing of the certificate that no transcript will be ordered, or the date the record is filed in FRAP 15 proceedings (the “ready date”), the appellant must notify the clerk in writing of the deadline it requests for appellant’s brief. The deadline must be within ~~±20~~91 days after the ready date. If the appellant fails to submit a scheduling request, the deadline for its brief is 40 days after the ready date.
- (B) **Appellee’s Request.** Within 14 days after the filing of the last appellant’s brief, an appellee must notify the clerk in writing of the deadline it requests for appellee’s brief. The deadline must be within ~~±20~~91 days after the filing of the last appellant’s brief. If the appellee fails to submit a scheduling request, the deadline for its brief is 30 days after the filing of the last appellant’s brief.
- (C) **Cross-Appeals.** In a case in which a cross-appeal is filed, within 14 days after the filing of the last cross-appellant’s brief, the appellant-cross-appellee must notify the clerk in writing of the deadline it requests for the

appellant-cross-appellee's brief. The deadline must be within 60 days after the filing of the last cross-appellant's brief. If the appellant-cross-appellee fails to submit a scheduling request, the deadline for its brief is 30 days after the filing of the last cross-appellant's brief.

- (D) **Request for a Later Deadline.** A party's scheduling request may propose a deadline later than the times set forth in (a)(1)(A)-(C) only if the case involves a voluminous record or extreme hardship would result. A request for a later deadline must explain the reasons why it is necessary.
- (2) **Reply Brief.** A reply brief must be filed within 14 days after the filing of the last appellee's brief.
- (3) **Tolling.** The filing of a dispositive motion, a motion to proceed in forma pauperis, or a stipulation under LR 42.1 tolls the time periods set forth in this rule until the motion is determined or the appeal is reinstated.

**(b) Expedited Appeals Calendar.**

- (1) **Subject Proceedings.** The court maintains an Expedited Appeals Calendar (XAC) for appeals from threshold dismissals, defined as a judgment or order of a district court dismissing a complaint solely for:
  - (A) lack of subject matter jurisdiction under Fed. R. Civ. P. 12(b)(1);
  - (B) failure to state a claim upon which relief can be granted under Fed. R. Civ. P. 12(b)(6); or
  - (C) filing a frivolous complaint or for any other ground specified in 28 U.S.C. § 1915(e)(2).
- (2) **Placement.** The clerk identifies a case for placement on the XAC and, as soon as practicable, informs the parties. Promptly after receipt of such notification, any party, for good cause shown, may move to remove the case from the XAC. If the court grants the motion, briefing will proceed under (a)(1) to (3).
- (3) **Briefing.** In a case placed on the XAC, the following briefing schedule applies:
  - (A) The appellant must file its brief within 35 days of the date of the clerk's notification of placement on the XAC.
  - (B) The appellee must file its brief within 35 days after the filing of the last appellant's brief.

(C) The appellant may submit a reply brief within 14 days after the filing of the last appellee's brief.

**(bc) Motions.** A motion regarding briefing, including a motion to file an oversized brief or to extend the time to file a brief, is governed by FRAP 27 and LR 27.1.

**(cd) Failure to File.** The court may dismiss an appeal or take other appropriate action for failure to timely file a brief or to meet a deadline under this rule.

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## **Local Rule 32.1 Form of Brief and Appendix**

**(a) Form of Brief.** Briefs must conform to FRAP 32(a), except as set forth below:

**(1) Cover.** The title appearing on the front cover of a brief must include the name of the party or parties for whom the brief is filed. The docket number of the case must appear in type at least one inch high.

**(2) Pamphlet Briefs.** If a litigant prefers to file a printed brief in pamphlet format, it must conform to the following specifications:

- Size of page: 6 1/8 by 9 1/4 inches.
- Sides used: both.
- Margins: at least one inch on all sides.
- Font size: 12-point type or larger, for text and footnotes.
- Spacing: 2-points or more leading between lines; 6-points or more between paragraphs.
- Other specifications: must conform to FRAP 32(a).

**(3) Sequential Numbering.** The pages of a brief must contain sequential numbering. A Filing User must adjust the PDF of the brief to recognize the Filing User's sequential numbering scheme in the PDF's page search field.

**(b) Form of Appendix.** An appendix must conform to FRAP 32(b), except as set forth below:

**(1) Cover.** The docket number of the case must appear in type at least one inch high.

**(2) Multi-volume Appendix.** An appendix that exceeds 300 pages must be divided into separate volumes, each of which must not exceed 300 pages.

**(3) Sequential NumbersNumbering.** The pages of an appendix must be sequentially numbered, beginning with the cover, and contain sequential numbering. A Filing User must adjust the PDF of the brief to recognize the Filing

User's sequential numbering scheme in the PDF's page search field. The pages of an appendix may be printed on both sides.

- (34) **Tabs.** Tabs may be used to separate documents in the appendix.
  - (45) **Condensed Transcripts.** An appendix may contain condensed transcripts, not to exceed 4 panels per page.
  - (56) **Detailed Table of Contents.** An appendix, and each volume therein, must contain a detailed table of contents, including the sequential page numbers where each document can be located. The table of contents must provide a description of each document that is sufficient to inform the court of its nature; designation solely by exhibit number or letter is insufficient.
- (c) **Special Appendix.** If the appendix, exclusive of the orders, opinions, and judgments being appealed, exceeds 300 pages, the parties must file a Special Appendix that conforms to ~~paragraph~~(b), and that contains the (1) orders, opinions, and judgments being appealed, and (2) the text, with appropriate citation, of any significant rule of law, including any constitutional provision, treaty, statute, ordinance, regulation, rule, or sentencing guideline. The Special Appendix may be an addendum at the end of a brief or a separately bound volume designated "Special Appendix."
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### **Local Rule 32.1.1 Disposition by Summary Order**

- (a) **Precedential Effect of Summary Orders.** Rulings by summary order do not have precedential effect.
- (b) **Citation of Summary Orders.**
  - (1) **Summary Orders Issued On or After January 1, 2007.** In a document filed with this court, a party may cite a summary order issued on or after January 1, 2007.
  - (2) **Summary Orders Issued Prior to January 1, 2007.** In a document filed with this court, a party may not cite a summary order of this court issued prior to January 1, 2007, except: (A) in a subsequent stage of a case in which the summary order has been entered, in a related case, or in any case for purposes of estoppel or res judicata; or (B) when a party cites the summary order as subsequent history for another opinion that it appropriately cites.
- (c) **Citation Form.** When citing a summary order in a document filed with this court, a party must cite either the Federal Appendix or an electronic database (with the notation

“summary order”).

- (d) **Service of Summary Orders on Pro Se Parties.** A party citing a summary order must serve a copy of it on any party not represented by counsel.

### **IOP 32.1.1 Summary Order**

- (a) **Use of Summary Orders.** When a decision in a case is unanimous and each panel judge believes that no jurisprudential purpose is served by an opinion (i.e., a ruling having precedential effect), the panel may rule by summary order.
- (b) **Summary Order Legend.** Summary orders filed on or after January 1, 2007, must bear the following legend:

#### SUMMARY ORDER

Rulings by summary order do not have precedential effect. Citation to a summary order filed on or after January 1, 2007, is permitted and is governed by Federal Rule of Appellate Procedure 32.1 and this court’s Local Rule 32.1.1. When citing a summary order in a document filed with this court, a party must cite either the Federal Appendix or an electronic database (with the notation “summary order”). A party citing a summary order must serve a copy of it on any party not represented by counsel.

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### **Local Rule 33.1 Civil Appeals Management Plan**

- (a) **Scope of Plan.** The Civil Appeals Management Plan (CAMP) applies to all civil appeals, petitions for review, and applications for enforcement. But CAMP does not apply to proceedings in which at least one party appears pro se, matters initially placed on the court’s Non-Argument Calendar, petitions for writs of mandamus or prohibition, and habeas corpus cases and proceedings under 28 U.S.C. § 2255, unless the court orders otherwise.
- (b) **Office of Staff Counsel.** Upon docketing a case, the clerk refers a CAMP-eligible case to the Office of Staff Counsel for review. Staff counsel may recommend to the clerk the entry of orders governing the case.
- (c) **CAMP Conference.** Staff counsel may direct counsel for the parties to participate in a conference to explore the possibility of settlement, narrow the issues, and discuss any matters that may expedite disposition of the appeal.
  - (1) **Counsel’s Preparation.** Before a CAMP conference, counsel must consult with

the client and obtain as much authority as feasible to settle the case, and must be prepared to discuss in depth the legal, factual and procedural issues of the case.

- (2) **Client Participation.** Counsel should participate in a conference without the client, unless staff counsel permits or requests otherwise. During the conference, the client must be available by telephone.
  - (3) **Conference Location.** At the discretion of staff counsel, the conference may be held in person at the offices of staff counsel, or may be conducted by telephone or video.
  - (4) **Survey.** After the conclusion of a CAMP proceeding, counsel for each party must complete the anonymous Post-Conference Survey and submit it electronically to this court's Director of Legal Affairs at [campsurvey@ca2.uscourts.gov](mailto:campsurvey@ca2.uscourts.gov).
- (d) **Referral to CAMP.** At any time during the pendency of any case (including those not within CAMP's scope as described in (a)), the parties may request or the court may determine to refer the case to CAMP for any purpose consistent with this rule.
  - (e) **Confidentiality.** Information shared during a CAMP proceeding is confidential and is not included in court files or disclosed to the judges of this court except to the extent disclosed by an order entered as a result of a CAMP proceeding. The attorneys and other participants are prohibited from disclosing what is said in a CAMP proceeding to anyone other than clients, principals or co-counsel, and then, only upon receiving due assurance that the recipient will honor confidentiality.
  - (f) **Grievance Procedure.** Any complaint regarding the handling of any CAMP proceeding ~~should~~must be submitted to the chief judge of the court.
  - (g) **Non-Compliance Sanctions.** The court may, after affording notice and an opportunity to be heard, impose sanctions on an attorney or party who does not participate in good faith in the CAMP program.
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### **Local Rule 34.1 Oral Argument and Submission on Briefs**

- (a) **Oral Argument Statement.** Within ~~21~~14 days after the filing of the ~~final~~last appellee's brief, each party must file an Oral Argument Statement Form. Failure to timely file the Oral Argument Statement Form signifies that the party does not seek oral argument.
- (b) **Court's Determination Not to Hear Oral Argument.** The court may determine to take a case on submission, without oral argument, in accordance with FRAP 34(a)(2). If the court decides to take a case on submission, the clerk will notify the parties.

- (c) **Number of Counsel.** Only one counsel may argue for each party unless the court orders otherwise.
  - (d) **Time Allotments.** The clerk notifies the parties of the argument time the court has allotted to each side. If there are multiple parties on the same side of an appeal, the court may require the parties to divide the time allotted to that side.
  - (e) **Postponement of Argument.** After a case has been set for oral argument, it may be postponed only by order of the court on a showing of extraordinary circumstances, and not by stipulation of the parties. Engagement of counsel in another tribunal (other than the U.S. Supreme Court) is not an extraordinary circumstance.
  - (f) **Exception.** This rule does not apply to a cases placed on the Non-Argument Calendar under LR 34.2.
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## **Local Rule 34.2 Non-Argument Calendar**

- (a) **Subject Proceedings.** The court maintains a Non-Argument Calendar (NAC) for the following classes of cases:
  - (1) **Immigration.** An appeal or petition for review, and any related motion, in which a party seeks review of the denial of:
    - (A) a claim for asylum under the Immigration and Nationality Act (INA);
    - (B) a claim for withholding of removal under the INA;
    - (C) a claim for withholding or deferral of removal under the Convention Against Torture; or
    - (D) a motion to reopen or reconsider an order involving one of the claims listed above.
  - (2) **Other.** Any other class of cases that the court identifies as appropriate for the NAC.
- (b) **Placement.** The clerk identifies a proceeding for placement on the NAC and, as soon as practicable, informs the parties.
- (c) **Oral Argument.** A proceeding on the NAC is decided without oral argument unless the court orders otherwise.

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## Local Rule 35.1 En Banc Procedure

- (a) **Form of Petition.** If a party is simultaneously filing a petition for panel rehearing and a petition for rehearing en banc, both requests must be made in a single document.
- (b) **Copy of Opinion or Summary Order Required.** A petition for rehearing en banc, or a combined petition for panel rehearing and for rehearing en banc, must include a copy of the opinion or summary order to which the petition relates, and must not include any other documents.
- (c) **Number of Paper Copies.** If a petition for rehearing en banc exceeds 50 pages, the petitioner must submit 15 paper copies to the clerk's office.
- (ed) **Procedure After Amendment of Court Ruling.** If the court substantively amends its opinion or summary order, a petition (or an amended petition) for rehearing en banc may be filed within the time specified by FRAP 35(c), counted from the date of filing of the amended opinion or order. A petition for rehearing en banc filed before amendment of the court's ruling may, but need not, be amended.
- (de) **Sanctions.** The court may, after affording notice and an opportunity to be heard, impose sanctions against a party that files a frivolous petition for rehearing en banc.

## IOP 35.1 En Banc Poll and Decision

- (a) **Judges Eligible to Request an En Banc Poll.** Only an active judge of the court or a senior judge who sat on the three-judge panel is eligible to request a poll of the active judges to determine whether a case should be heard or reheard en banc.
- (b) **Judges Eligible to Vote in an En Banc Poll.** Only an active judge may vote to determine whether a case should be heard or reheard en banc. A judge's status as an active or senior judge for the purpose of an en banc poll is determined on the date of entry of the en banc order.
- (c) **Judges Eligible to Participate in an En Banc Hearing or Rehearing.** Only an active judge or a senior judge who sat on the three-judge panel is eligible to participate in the en banc hearing or rehearing. A judge's status as an active or senior judge is determined on the date of the hearing or rehearing en banc, i.e., on the date oral argument is heard or the case is submitted.
- (d) **Judges Eligible to Participate in an En Banc Decision.** Only an active judge or a senior judge who either sat on the three-judge panel or took senior status after a case was heard or reheard en banc may participate in the en banc decision. A judge who joins the

court after a case was heard or reheard en banc is not eligible to participate in the en banc decision.

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### **Local Rule 38.1 Sanctions for Delay**

The court may, after affording notice and an opportunity to be heard, impose sanctions on a party that: (a) fails to file a brief, the appendix, or any required form within the time specified by FRAP or a rule or order of this court, or (b) takes or fails to take any other action for the purpose of causing unnecessary delay.

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### **Local Rule 39.1 Reproduction Costs**

The cost of reproducing necessary copies of briefs, appendices, or record excerpts is taxable at the lesser of the actual cost or \$0.20 per page.

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### **Local Rule 39.2 Applications Under the Equal Access to Justice Act**

A party making an application under 28 U.S.C. § 2412(d)(1)(B) must: ~~(a) use this court's Form T-1080 Motion Information Statement, and (b) file an original and 2 copies.~~

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### **Local Rule 40.1 Panel Rehearing Procedure**

- (a) Copy of Opinion or Summary Order Required.** A petition for panel rehearing must include a copy of the opinion or summary order to which the petition relates, and must not include any other documents.
- (b) Number of Paper Copies.** If a petition for panel rehearing exceeds 50 pages, the petitioner must submit 3 paper copies of the petition to the clerk's office. If the petition for panel rehearing is simultaneously filed with a petition for rehearing en banc, the petitioner must submit the number of copies required by LR 35.1(c).
- (bc) Procedure After Amendment of Court Ruling.** If the court substantively amends its opinion or summary order, a petition (or an amended petition) for panel rehearing may be filed within the times specified by FRAP 40(a)(1), counted from the date of filing of the amended opinion or order. A petition for panel rehearing filed before amendment of the court's ruling may, but need not, be amended.
- (cd) Sanctions.** The court may, after affording notice and an opportunity to be heard, impose

sanctions against a party that files a frivolous petition for panel rehearing.

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### **Local Rule 42.1 Dismissal Without Prejudice**

If the parties file an original or supplemental signed agreement for dismissal without prejudice to reinstatement, the agreement must specify the terms of reinstatement, including a date by which reinstatement must occur. The dismissal is not effective unless the court “so orders.” Reinstatement occurs only upon written request by the date specified in the agreement.

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### **Local Rule 45.1 Clerk’s Authority to Issue Orders**

The clerk signs and enters, electronically or otherwise, all orders on behalf of the court.

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### **Local Rule 46.1 Attorney Admission**

- (a) **Admission Requirements; Procedures.** Except as otherwise provided in these rules, an attorney who appears on behalf of a party or an amicus curiae in any capacity must be admitted to practice before this court, or have pending an application for admission, and must file a Notice of Appearance in accordance with LR 12.3.
- (1) **Applying for Admission.** To request admission to the bar of this court, an attorney must complete an application composed of:
- (A) the attorney admission application;
  - (B) the attorney admission oath; and
  - (C) the sponsor’s motion for attorney admission.
- (2) **Renewal of Admission.** An attorney is admitted for a period of five years, and must renew admission every five years for an additional five-year period. Renewal requires submission of an attorney admission renewal application.
- (A) **Failure to Renew; Inactive Status.** An attorney who fails to renew admission within one month after the expiration of the five-year period is placed in inactive status. An attorney in inactive status must complete the renewal process to practice before the court. After 12 months in inactive status, an attorney is removed from the court’s admission roll and must reapply for admission in accordance with (a)(1).

- (B) **Admission Renewal Schedule.** An attorney already admitted to practice in this court must initially renew admission in accordance with the timetable below, and must thereafter renew admission every five years based on this initial renewal date.
- (i) **Admission on or after July 1, 2004.** An attorney admitted to this court on or after July 1, 2004, must renew admission no later than five years from the original date of admission.
  - (ii) **Admission before July 1, 2004.** An attorney admitted to this court before July 1, 2004, must renew admission no later than the anniversary date of the original admission as it occurs during the period July 1, 2009 through June 30, 2010.
- (b) **Change in Contact Information.** An attorney admitted to practice in this court must promptly notify the clerk of a change in any of the contact information required on the attorney admission data form.
- (c) **Fee.** An attorney applying for admission or renewal of admission must pay to the clerk the fee set by the court and posted on the court's website.
- (d) **Pro Hac Vice Admission.** An attorney may be admitted pro hac vice to appear in a particular proceeding without formally applying for admission or paying the admission fee. Pro hac vice admission will be considered on submission of a written motion to the court before filing a notice of appearance. To qualify, the attorney must be a member in good standing of a state or the District of Columbia bar and must be one of the following:
- (1) a member of the bar of a district court within the circuit who has represented a criminal defendant at trial and appears for that defendant on an appeal taken under 18 U.S.C. § 3006A;
  - (2) acting for a party proceeding in forma pauperis; or
  - (3) able to demonstrate exceptional circumstances justifying admission for the particular proceeding.
- (e) **Appearance and Argument by Eligible Law Students.**
- (1) **Law Student Appearance.** The court on motion may, with sufficient consent of the party or (for a government entity) counsel of record, permit an eligible law student to appear in this court under the supervision of an attorney.
  - (2) **Supervising Attorney.** The supervising attorney must be a member of the bar of

this court and, with respect to the law student's proposed appearance before this court, must:

- (A) file with this court the attorney's written consent to supervise the student;
  - (B) assume professional responsibility for the student's work;
  - (C) assist the student to the extent necessary; and
  - (D) introduce and appear with the student in all proceedings before this court and be prepared to supplement any written or oral statement made by the student to this court or opposing counsel.
- (3) **Law Student Eligibility.** A law student is eligible to appear if:
- (A) the student is enrolled in an ABA-accredited law school and has completed at least four full-time semesters of legal studies (or the equivalent), or has graduated and is awaiting the results of the first bar examination or bar admission process of any state;
  - (B) the law school certifies that the student is qualified to provide the legal representation permitted by this rule;
  - (C) the client does not pay any compensation or remuneration for the student's services; and
  - (D) the student certifies in writing that the student is familiar and will comply with the ABA's Model Rules of Professional Conduct, FRAP, the rules of this court, and any other federal rules relevant to the appeal in which the student is appearing.

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## **Local Rule 46.2 Attorney Discipline**

- (a) **Grievance Panel.** All attorney grievance and discipline matters are initially handled by a panel of judges, the "Grievance Panel."
- (b) **Committee on Admissions and Grievances.**
  - (1) **Appointment of Committee Members, Chair, and Secretary.**
    - (A) A standing committee of members of the bar, the "Committee on Admissions and Grievances," is appointed by the court to serve staggered

three-year terms.

- (B) The court designates a Committee member to serve as chair, and appoints a bar member to serve as secretary. The Committee's secretary is not entitled to vote on its proceedings.

**(2) Referrals.**

- (A) The court's Grievance Panel may refer to the Committee, for investigation, hearing and report, the following types of matters:
  - (i) an accusation or evidence of attorney misconduct, including affirmative misconduct, negligent conduct, or conduct caused by or resulting from physical or mental infirmity, or the use of alcohol, drugs or other substances;
  - (ii) any other circumstance suggesting that an attorney may be unable to meet obligations to the court; or
  - (iii) any other situation in which the Grievance Panel seeks the guidance of the Committee, including matters relating to applications for admission or reinstatement to the court's bar, possible reciprocal discipline based on the imposition of discipline by another court or bar, or possible discipline based on an attorney's criminal conviction.
- (B) The Committee may refer a matter to an appropriate attorney disciplinary authority for preliminary investigation, or may conduct a joint investigation with that authority. For the purpose of this rule, an attorney disciplinary authority includes any court, bar association, attorney admissions or discipline committee, government agency, or other licensing authority responsible for regulating the conduct of attorneys practicing law in that jurisdiction.

**(3) Committee Proceedings.**

- (A) **Investigation.** Unless the Grievance Panel directs otherwise, the Committee may commence an investigation of a matter referred to it before the provision of notice to the attorney. The Committee determines the appropriate extent and methods of investigation.
- (B) **Notice of Charges and Order to Show Cause.** If the Committee determines to bring charges against an attorney, it will provide the attorney with a written notice of the charges and the reasons the conduct may

warrant the imposition of discipline or other corrective measures, and will order the attorney to show cause why discipline or other corrective measures, either specified in the notice and order or to be later determined, should not be imposed. A notice and order is served on the attorney personally or by certified or registered mail.

- (C) **Representation by Counsel.** An attorney subject to proceedings under this rule is entitled to be represented by counsel throughout the proceedings.
  
- (D) **Attorney Answer to Notice of Charges and Order to Show Cause.** Unless the Committee directs otherwise, the attorney must respond to the notice of charges and order to show cause within 28 days after service by filing an answer, any supporting evidence and any request for a hearing.
  - (i) Absent a court order to the contrary, the attorney may examine all documents in the record before submitting an answer.
  
  - (ii) The answer must include the following information: (a) a list of all bars to which the attorney is admitted, including all bar numbers and other bar identification information; (b) a list of all cases pending before the court in which the attorney is involved; (c) a list of any pending or previous disciplinary proceedings, and any discipline imposed, by an attorney disciplinary authority; (d) a statement of the alleged facts that are controverted; (e) the basis on which any controverted facts are disputed; and (f) any additional facts that are relevant to the Committee's determinations on the need for discipline or other corrective measures, including facts relevant to defense or mitigation.
  
  - (iii) The attorney must produce all documents requested in the Committee's notice of charges and order to show cause.
  
  - (iv) The answer must be made under oath or in such other form that the penalties for perjury apply.
  
  - (v) A copy of the answer may, in the discretion of the Committee, be furnished to a complainant or to other persons whose participation is relevant to the proceeding.
  
- (E) **Hearing Procedures.** After the attorney has answered the Committee's notice of charges and order to show cause, or after the time to answer has expired, the Committee may hold a hearing to take testimony and receive other evidence, to hear argument, or both. If the Committee holds a

hearing:

- (i) the Committee must provide at least 14 days notice to the attorney of any hearing;
- (ii) the attorney has the right to appear, to present witnesses and other evidence, and to confront and cross-examine under oath any witness against the attorney;
- (iii) the Committee, or the person presiding over the hearing, may announce and be governed by any other rules of procedure warranted by the circumstances;
- (iv) the attorney and all witnesses must testify under oath or affirmation; and
- (v) a record and transcript of the hearing must be made.

**(F) Subpoenas and Other Orders.**

- (i) **Subpoenas and Orders Requiring Production of Evidence, Testimony, or Examination.** The Committee or the attorney who is the subject of a proceeding before the Committee may apply to the Grievance Panel, on a showing of good cause, for a subpoena or other order requiring (a) the production of relevant documents or other evidence in the possession of third parties or the attorney, (b) the presence and testimony of relevant witnesses or the attorney at a deposition or hearing, or (c) a witness or the attorney to submit to a physical or mental examination by a suitably licensed or certified examiner.
- (ii) **Protective Orders.** The Committee, the attorney, or any other affected person may apply to the Grievance Panel for a protective order.
- (iii) **Sanction Orders.** The Committee, the attorney, or any other affected person may apply to the Grievance Panel for an order sanctioning a person who fails to obey a Committee or Grievance Panel order or who violates the Committee's or the Court's confidentiality rules.

- (G) **Burden of Proof.** A finding of misconduct must be supported by clear and convincing evidence. A finding as to any other issue, including issues pertaining to the imposition of discipline or other corrective measures,

must be supported by a preponderance of the evidence.

- (H) **Exception to Procedures.** In a particular matter, the Grievance Panel or the Committee may determine that one or more of the procedures described in this rule are unnecessary or inappropriate, in which case it will so advise the attorney.
- (I) **Effect of Attorney's Incapacity, Death, or Actual or Proffered Resignation on Committee Proceedings.** Once a matter has been referred to the Committee by the Grievance Panel, the Committee in the first instance determines the effect of the subject attorney's incapacity, death, or actual or proffered resignation on Committee proceedings. That determination is then incorporated into the Committee's report to the Grievance Panel.

(4) **Committee Report.**

- (A) **Filing Procedure.** The Committee must file with the clerk the record of its proceedings, a report containing its findings and recommendations, and any separate or dissenting statements of Committee members. The clerk retains the report under seal after furnishing the Grievance Panel with copies. The Committee may, at its discretion, inform a complainant or other interested party that the report has been filed with the court. The clerk mails a copy of the report to the attorney and makes the record of the proceedings available to the attorney.
- (B) **Committee Recommendations.** The Committee may recommend to the Grievance Panel that the attorney be:
  - (i) removed from the bar of the court;
  - (ii) if not a member of the bar of the court, precluded from becoming a member or from appearing in future cases before the court;
  - (iii) suspended from practice before the court, for either an indefinite or a specified period of time;
  - (iv) publicly or privately reprimanded;
  - (v) monetarily sanctioned;
  - (vi) removed from the court's pro bono or Criminal Justice Act panels;

- (vii) referred to another attorney disciplinary authority, law enforcement agency, or other agency or organization;
- (viii) subject to other disciplinary or corrective measures as the circumstances may warrant, including any combination of the preceding possible measures; or
- (ix) not subject to discipline and the charges dismissed.

(C) **Attorney Response to Committee Report.** Within 21 days after the filing of the report, the attorney must file a response conforming to the requirements of FRAP 27(d). The response may oppose, seek to mitigate, or waive objection to the report. The Grievance Panel may request that the Committee reply to the attorney's response.

(5) **Decision by the Court.** After receipt of the attorney's responding statement and any Committee reply (or after expiration of the time for the filing of the statement and reply), the Grievance Panel, or another panel of the court as directed by the Grievance Panel, rules on the matter within a reasonable time by majority vote.

(6) **Confidentiality.** All matters referred to, all proceedings conducted by, and all records possessed by the Committee remain confidential, unless the Grievance Panel orders otherwise, or the Committee acts under (b)(2)(B). The Committee may make recommendations to the Grievance Panel concerning confidentiality issues, including the possible need for a protective order or an order sanctioning the violation of a confidentiality rule, or the desirability of making public, in whole or part, a matter that is otherwise confidential under these rules. The Committee may recommend public disclosure, or notification to a particular person or entity, in order to protect the public, the administration of justice, or the legal profession.

(c) **Reciprocal Suspension or Disbarment.**

(1) **Notification Requirement.** An attorney admitted to practice in this court who is disbarred, suspended, publicly censured, or otherwise disciplined by an attorney disciplinary authority must file with the clerk a copy of that disciplinary order within 28 days. For the purpose of this rule, an attorney who resigns from the bar of a state or court while under investigation for alleged misconduct is deemed disbarred by that state or court, and the attorney's resignation, along with any acknowledgment or acceptance of that resignation by the state or court, is deemed an order of disbarment.

(2) **Reciprocal Order.** When the court receives a copy of an order entered by an attorney disciplinary authority disbaring or suspending an attorney from practice,

the clerk enters an order disbaring or suspending the attorney from practice before this court on comparable terms and conditions. This court's order becomes effective 28 days after it is filed, unless the court orders otherwise.

- (3) **Motion to Modify or Vacate.** Within 21 days after the filing of this court's order, the attorney may move to modify or vacate the order. The motion will be decided by the Grievance Panel, unless referred to the Committee. The timely filing of a motion stays the court's order until the motion is determined. Unless good cause is shown, an untimely motion will not be considered.

(d) **Attorney Convicted of Crime.**

- (1) **Notification Requirement.** An attorney admitted to practice in this court who has pled guilty to or been found guilty of a crime (a "guilty verdict") must notify the clerk in writing within 28 days after entry of the guilty verdict.

(2) **Response to Notification.**

(A) When the court receives notification of a guilty verdict for a serious crime, as defined below, the clerk: (i) immediately enters an order suspending the attorney, and (ii) serves a copy of the order on the attorney by mail at the attorney's last known address.

(B) When the court receives notification of a guilty verdict for a crime that is not a serious crime, the clerk forwards the relevant documents to the Grievance Panel, which determines whether to enter a suspension order, commence a disciplinary proceeding, or refer the matter to the Committee.

(C) The term "serious crime" means a federal or state felony, or a federal or state crime other than a felony that includes as a necessary element – as determined by the statutory or common law definition of the crime in the jurisdiction where the plea or verdict has been entered – any of the following: (i) interference with the administration of justice; (ii) false statement under oath; (iii) misrepresentation; (iv) fraud; (v) willful failure to file an income tax return; (vi) deceit; (vii) bribery; (viii) extortion; (ix) misappropriation; (x) theft; or (xi) an attempt, or conspiracy, or solicitation of another to commit a serious crime.

- (3) **Evidentiary Effect.** A guilty verdict for any crime is clear and convincing evidence of conduct unbecoming a member of the bar.

- (4) **Motion to Modify or Vacate.** The attorney may move to modify or vacate a suspension or other disciplinary order under (d). The motion will be decided by the Grievance Panel, unless referred to the Committee.

- (5) **Reinstatement.** An attorney suspended under (d)(2) will be reinstated upon the filing of a clerk's certificate showing reversal of the underlying conviction, although the Grievance Panel may continue any proceeding then pending against the attorney.
  - (6) **Disbarment.** A suspension order under (d)(2)(A) will be converted to a disbarment order upon exhaustion of all direct appeals from a criminal conviction, unless the court orders otherwise.
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### **Local Rule 47.1 Death Penalty Cases**

- (a) **Defined.** A death penalty case is an appeal or other proceeding to which the person under sentence of death is a party, and which challenges, defends, or otherwise relates to the validity or execution of a decreed death sentence.
- (b) **Certificate of Death Penalty Case.** Within 7 days after initiation in this court or a district court of this circuit of a proceeding challenging a federal or state court judgment imposing a death sentence, the government and each party to that proceeding who was sentenced to death must file with the circuit clerk a Certificate of Death Penalty Case form.
- (c) **Stay of Execution and Motion to Vacate an Order Granting Stay of a Federal or State Court Judgment.**
  - (1) **Automatic Stay.** In any case in which a death sentence has been imposed by a federal or state court within the circuit, execution of the death sentence is automatically stayed upon (A) the filing of a direct appeal from a judgment imposing a death sentence, or (B) the filing of a notice of appeal from the denial of either the first application for a writ of habeas corpus or the first motion under 28 U.S.C. § 2255. The clerk must promptly enter an order implementing the stay. Unless vacated or modified, the stay provided by this subparagraph remains in effect until the issuance of this court's mandate. A party seeking to extend the stay of execution pending the filing of a petition for certiorari must also seek to stay the mandate under FRAP 41.
  - (2) **Other Stays; Duration.** Any judge of a panel assigned to a death penalty case may order a stay of any duration up to the issuance of the mandate. A party seeking to extend the stay of execution pending the filing of a petition for certiorari must also seek to stay the mandate under FRAP 41.
  - (3) **Stays in Relation to a Petition for Rehearing.**

- (A) A petition for rehearing, when accompanied by a petition for rehearing en banc, is circulated simultaneously to all active judges and the panel assigned to the death penalty case. A judge participating in the petition for rehearing en banc may immediately vote on a stay of execution of a death sentence, without waiting for the assigned panel to act on the petition for rehearing.
- (B) A stay of execution of a death sentence pending disposition of a petition for rehearing, when accompanied by a petition for rehearing en banc, is granted upon the affirmative vote of any two judges eligible to participate in rehearing en banc.
- (4) **Documents Required for Motions for Stay or to Vacate Stay.** On a motion for a stay of execution of a death sentence or to vacate a stay, the movant must attach a copy of each document listed below (if it exists) to the original and to each copy of the motion, except in the following circumstances: (A) if time does not permit, in which case the movant must file the required attachments as soon as possible; or (B) if the motion reports the stated intention of the State or the U.S. Attorney not to oppose a temporary stay for the purpose of deciding the motion, in which case the movant must file the necessary attachments within 10 days after filing the motion.
- The indictment or other accusatory instrument;
  - The judgment of conviction containing the sentence of death;
  - The application or complaint filed in the district court;
  - The opinion of the district court setting forth the reasons for granting or denying relief;
  - The district court judgment granting or denying relief;
  - The district court order granting or denying a stay, and the statement of reasons for its action;
  - The certificate of appealability or order denying a certificate of appealability;
  - Each state or federal court opinion or judgment bearing on the issues presented in the motion in cases in which the appellant was a party;
  - The docket entries of the district court; and

- The notice of appeal.
- (5) **Emergency Motion.** An emergency motion for a stay must be filed in accordance with LR 27.1(d). The motion must contain a brief account of this court’s prior actions, if any, and the name of the judge or judges involved in those prior actions.
  - (6) **Filing with the Clerk.** All stay motions must be filed with the clerk. If the court orders a stay of execution, the clerk will issue a written order in the name of the court specifying the duration of the stay.
  - (7) **Off-Hours Filing.** When a notice of appeal is filed in a death penalty case, the clerk designates a staff member to receive emergency stay motions during non-business hours. The staff member immediately advises the panel assigned to the death penalty case of the filing of an emergency stay motion.
  - (8) **Limits on Stays of Execution.** Notwithstanding any provision of this paragraph (c), this court will not grant or maintain stays of execution except in accordance with federal statutes or other governing law.

#### **IOP 47.1 Death Penalty Cases; Administration**

- (a) **Monitoring of Death Penalty Cases.** The clerk is authorized to monitor any case within this circuit with a scheduled execution date, and to communicate with all parties and relevant state and federal courts. If the parties submit documents to the clerk before filing a notice of appeal, the clerk will docket the documents under a miscellaneous docket. The clerk closes the miscellaneous docket case upon the opening of a regularly docketed death penalty case, or upon other final disposition of the case without its reaching this court.
- (b) **Death Penalty Case Pool and Panels.**
  - (1) **Death Penalty Case Pool.** The death penalty case pool consists of all active judges of the court and those senior judges who have filed with the clerk a statement of willingness to serve on death penalty case panels.
  - (2) **Death Penalty Case Panel.** On receipt of a notice of appeal or a request for a certificate of appealability, or other application to this court for relief in a death penalty case, the clerk docket the case and assigns it to a death penalty case panel.
  - (3) **Selection.** The clerk assigns judges to death penalty case panels by random drawing from the death penalty case pool. If a judge is unable to serve, that

judge's name returns to the pool after the drawing of a replacement. If a random drawing results in the selection of three senior judges, the clerk sets aside the third senior judge's name and continues drawing until the selection of an active judge's name, after which the clerk returns the third senior judge's name, and the names of any senior judges drawn thereafter, to the pool.

- (4) **Rotation.** A judge who serves on a death penalty case panel is not eligible to serve again until the pool is exhausted. When the pool is exhausted, the clerk prepares a new death penalty case pool and selects death penalty case panels from the pool in like manner.
  - (5) **Replacement.** If any judge serving on a death penalty case panel is unable to continue to serve, the clerk draws a replacement from the death penalty case pool, and returns the replaced judge's name to the pool.
  - (6) **Duties of Death Penalty Case Panel.** A panel assigned to a particular death penalty case handles all matters pertaining to that case, including the direct appeals of co-defendants, at least to the extent that they involve issues in common.
- (c) **Request for Certificate of Appealability.** The clerk initially refers a request for a certificate of appealability to a single judge of the panel assigned to a death penalty case, who has authority to issue the certificate. If the single judge denies the certificate, the clerk refers the application to the full panel for disposition by majority vote.

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## INTERNAL OPERATING PROCEDURES

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### IOP A Name

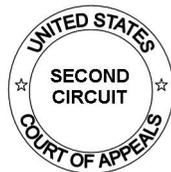
The name of the court is "United States Court of Appeals for the Second Circuit." *See* 28 U.S.C. §§ 41, 43(a).

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### IOP B Seal

The seal of the court is:



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## **IOP C Website**

The court maintains an Internet website at [www.ca2.uscourts.gov](http://www.ca2.uscourts.gov). The website provides information about the organization and operation of the court, including announcements and notices about rule changes. The website also contains links to the court’s calendar, docket, decisions, rules, instruction booklets, and all of the forms identified in the local rules.

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## **IOP D Terms, Sessions**

The court holds a continuous annual term commencing in August or September as the court may designate, and ending the day before the first day of the next term. The court holds sessions in New York, New York, at times it designates, and at other locations and times as the court directs. *See* 28 U.S.C. §§ 46, 48.

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## **IOP E Quorum**

- (a) A quorum is a majority of a panel or of the court en banc. *See* 28 U.S.C. § 46. If less than a quorum is present at any court session, any judge who attends may adjourn the session, or, if no judge is present, the clerk may adjourn the session.
  - (b) After a matter has been assigned to a three-judge panel, if for any reason a panel judge ceases to participate in consideration of the matter, the two remaining judges may – if they agree – decide the matter, or may request the clerk to designate a third judge by random selection. If a third judge is designated, the clerk will advise the parties. Additional briefs and argument are not permitted unless the court orders otherwise.
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## **IOP F Clerk’s Office; Mail; Hours**

The clerk’s office is located at 500 Pearl Street, New York, New York 10007, and the mailing address is the Thurgood Marshall United States Courthouse, 40 Foley Square, New York, New York 10007. The office is open from 9:00 a.m. to 5:00 p.m. daily, except Saturdays, Sundays, legal holidays, and any other days the chief judge may designate.

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## **IOP G Fees**

The clerk charges fees and costs in accordance with 28 U.S.C. § 1913, as posted on this court’s website. When fees are payable to this court, payee name is “United States Court of Appeals for

the Second Circuit.”

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## **IOP H Library**

This court’s library is open to all federal court personnel, federal government lawyers and their staff, and members of the federal bar. The library is open during such hours as reasonable needs require and is governed by such regulations as the circuit librarian, with the approval of the court, may prescribe. Books and other materials may not be removed from the building.

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## **IOP I Circuit Judicial Administration**

- (a) **Judicial Council.** The Second Circuit Judicial Council, as authorized by 28 U.S.C. § 332, is composed of the chief circuit judge, the six most senior active circuit judges, and the six chief district judges of the circuit. The chief circuit judge regularly convenes council meetings to set circuit judicial policy and to consider and take required action on any matter affecting the administration of justice within the circuit.
  - (b) **Circuit Executive.** In accordance with 28 U.S.C. § 332(e), the circuit executive performs administrative work for the judicial council and carries out the duties the council delegates to the circuit executive.
  - (c) **Judicial Conference.**
    - (1) **Purpose.** In accordance with 28 U.S.C. § 333, the chief judge may periodically convene a circuit judicial conference to consider the business of the courts and to advise means of improving the administration of justice within the circuit.
    - (2) **Composition.** The chief judge may invite only judges to the conference, or may also invite members of the bar in accordance with rules established by the circuit judicial council. The chief judge may designate a portion of the conference as an executive session, attended by only the judges and other individuals that the chief judge invites.
    - (3) **Administration.** Subject to the direction of the chief judge and the judicial council, the judicial conference is administered by the circuit executive, who may be assisted by court staff and by a planning committee of judges and individual members of the bar, selected at the discretion of the chief judge.
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## **APPENDIX**

### **PART A**

#### **AMENDED PLAN TO SUPPLEMENT THE PLANS ADOPTED BY THE SEVERAL DISTRICT COURTS WITHIN THE CIRCUIT, AS REQUIRED BY THE CRIMINAL JUSTICE ACT OF 1964, 18 U.S.C. § 3006A, AS AMENDED**

##### **PREAMBLE**

The Judicial Council, in promulgating the amended plan set forth below, recognizes that while the Criminal Justice Act provides for limited compensation, attorneys chosen pursuant to the plans to represent defendants are rendering a public and social service of the greatest importance. The Bar has traditionally represented with high dedication defendants unable to pay any compensation for such representation. Services performed for defendants qualifying under the plan will continue to be rendered by members of the Bar, essentially in their capacity as officers of the Courts and in keeping with the high traditions of the legal profession and its vital role in society. We also recognize that despite the nominal compensation provided by the Act, such services will be performed with devotion and vigor so that the lofty ideal - equality before the law for all persons - will be achieved. With this recognition of the importance of representation for the accused, we are confident that all segments of the Bar will accept as part of their professional obligations the need to render the most competent services to defendants in each and every phase of criminal proceedings and that the organized Bar will be stimulated into increased activity with respect to the administration of criminal justice.

Therefore, pursuant to Section 2(a) of the Criminal Justice Act of 1964, 18 U.S.C. § 3006A, as amended (hereinafter, "the Act"), 21 U.S.C. § 848(q), and the Guidelines for the Administration of the Criminal Justice Act, Vol. VII, Guide to Judiciary Policies and Procedures, the Judicial Council of the Second Circuit does, for the purpose of supplementing the several plans approved by the United States District Courts within the Circuit in compliance with the Act, hereby adopts the following amended plan to secure adequate representation on appeal for defendants who are financially unable to employ counsel in the cases and situations defined in 18 U.S.C. § 3006A, as amended.

## I.

### PREPARATION OF PANEL OF ATTORNEYS

1. The Clerk of this Court, under the direction and supervision of the Chief Judge or the Chief Judge's designee, shall maintain a panel of practicing attorneys who are competent to provide adequate representation on appeal for defendants in criminal cases qualifying under the Act, to supplement the services of the Legal Aid Society and the Federal Public Defenders within this circuit. The list of panel members shall include the name of each attorney, the attorney's address and telephone number, and brief data as to the attorney's experience.
2. Appointments to the panel shall be made by the Court upon appropriate recommendation of a screening committee appointed by the Chief Judge. Attorneys so appointed may receive compensation for their services and reimbursement for their expenses to the maximum amount provided by 18 U.S.C. § 3006(d)(2).
3. All private attorneys seeking to be included on the panel must submit to the Clerk of Court an application (available from the Clerk's Office), a resume, and a writing sample. These will be reviewed in accordance with paragraph 2 of this section. Applicants must be members in good standing at the bar of this Court, must maintain an office within the Circuit, and have demonstrated experience in, and knowledge of, the Federal Rules of Appellate Procedure, the Federal Rules of Criminal Procedure, the Federal Rules of Evidence and the United States Sentencing Guidelines.
4. Attorneys for the panel shall be selected without regard to race, color, creed, gender or membership in any organized bar association.
5. A member of the CJA panel may be removed from the panel whenever the Court determines that the member has failed to satisfactorily fulfill the obligations of panel membership or has engaged in other conduct which renders it inappropriate that he or she be continued as a panel member.

An attorney may be removed from the panel by the Clerk for twice refusing to accept an appointment.

## II.

### **DETERMINATION OF NEED FOR APPOINTED COUNSEL**

1. In every criminal case appealed in forma pauperis by order of the District Court or this Court and in the cases and situations defined in 18 U.S.C. § 3006A, as amended, the Clerk shall forthwith notify the appellant that the appellant has the right to be represented and that counsel may be appointed for the appellant. The foregoing notice shall also be given in all such appeals taken by the United States. If counsel has been appointed under the Act by the District Court, counsel shall continue to represent the appellant unless or until counsel has been notified by the Court of Appeals that other counsel has been appointed and that counsel's services are no longer required.
2. In cases where a request for the appointment of an attorney under the Act is made for the first time on appeal the Chief Judge or the Chief Judge's designee, before making the appointment, shall inquire into and make a finding as to whether appellant is financially able to employ counsel. In making the determination, such forms as may be prepared and furnished by the Administrative Office of the United States Courts shall be utilized for the purpose of eliciting pertinent information.
3. In cases where the defendant was found by the District Court to be financially unable to employ counsel, the Court of Appeals may accept this finding and appoint or continue an attorney without further proof.
4. The Court may, at any time after appointment of counsel, reexamine the financial status of the defendant. If it is found that the appellant is financially able to obtain counsel or make partial payment for the appellant's representation, the appointment may be terminated or partial payment required to be made. If there should come to the knowledge of appointed counsel any information indicating that the defendant or someone on the defendant's behalf can make payment in whole or in part for legal services, it shall be the appointed counsel's duty to report such information promptly to the Court, so that appropriate action may be taken hereunder.

### III.

#### APPOINTMENT OF COUNSEL

1. In all criminal cases on appeal in which the appointment of an attorney by the Court of Appeals under the Act is required, and in cases listed in 18 U.S.C. § 3006A(a), where the Court has determined that appointment of counsel is required in the interests of justice, the appointment shall be made by the Court from the panel in such manner as deemed advisable. Appointments of private attorneys shall be made in a substantial proportion of the cases, insofar as practical. Appointed counsel representing the defendant in the District Court will be designated by the Court of Appeals to continue on appeal. Retained counsel, whether or not a member of the panel, may seek to be appointed under the Act. Such application must be supported by financial documentation as specified in Section II, paragraph 2 of this Plan. The appointment of counsel on appeal shall be made within a reasonable time after the appeal is docketed.
2. In appeals involving more than one defendant, one or more attorneys may be appointed to represent all appellants, but where circumstances warrant, such as conflicting interests of respective appellants, separate counsel may be appointed as necessary.
3. The Court may, at any point in the appellate proceedings, substitute one appointed counsel for another, but in no event shall the total compensation to all counsel exceed the maximum permitted by the Act. Appointed counsel replaced by such substitution, shall await the final disposition of the appeal before submitting a claim for compensation as prescribed in Article V.
4. The selection of counsel shall be the sole and exclusive responsibility of the Court, and any defendant entitled to representation under the Act shall not be permitted to make the selection of an attorney to represent the defendant from the panel or otherwise.
5. When the Court determines that the appointment of an attorney who is not a member of the CJA panel is appropriate in the interest of justice, judicial economy, or some other compelling circumstance warranting his or her appointment, the attorney may be admitted to the CJA panel pro hac vice and appointed to represent the appellant.

## **IV.**

### **DUTIES OF APPOINTED COUNSEL**

1. In the event of affirmance or other decision adverse to the defendant, counsel shall promptly transmit a copy of the Court's decision, advise the defendant in writing of the right to file a petition for writ of certiorari with the Supreme Court, inform defendant of counsel's opinion as to the merit and likelihood of success in obtaining such a writ, and, if requested to do so, petition the Supreme Court for certiorari. Upon proper motion filed within seven days after the entry of judgment indicating that such petition for certiorari would be wholly frivolous, counsel may be relieved of the obligation to file the petition by the Court. If counsel is relieved, counsel shall within seven days after such motion is granted so advise the appellant in writing and inform the appellant concerning the procedures for filing a petition for a writ of certiorari pro se.

If the United States seeks a writ of certiorari to review a judgment of this Court, counsel shall take all necessary steps to oppose the United States' petition.

2. Counsel shall continue to represent defendant after remand by the Court of Appeals to the District Court. An attorney appointed by the Court of Appeals who is unable to continue at the trial level should move in the District Court for withdrawal and appointment of trial counsel.
3. An appointed attorney shall not delegate any substantive tasks in connection with representation of a defendant to any person other than a partner, associate, or regular employee of the law firm of which the appointed attorney is a partner or associate, without the written consent of the defendant and the Court.

## **V.**

### **PAYMENT**

1. An attorney appointed pursuant to this plan shall be compensated upon the submission of the attorney's voucher in accordance with the rules, regulations and forms promulgated by the Administrative Office of the United States Courts, and supported by a written statement specifying the time expended, services rendered, and expenses incurred while the case was pending in the Court of Appeals, unless another means of compensation is specifically provided for herein. Unless good cause is shown, claims for attorney's fees, expenses and services shall be submitted no later than 45 days after this Court has finally disposed of the appeal.

The Court in each instance in which a claim must be filed in accordance with the above shall fix the compensation and reimbursement to be paid to the attorney in accordance with the provisions of the Act.

The appellate staff of any defender organization organized pursuant to subparagraph (g)(2)(A) or (B) of the Act shall be supported by grants as provided under the Act and shall not be compensated upon statements submitted in accordance with the foregoing provisions for the work on any cases in which assignment has been made.

2. Except as authorized or directed by the Court, no appointed attorney and no person or organization authorized by the Court to furnish representation under the Act, shall request or accept any payment or promise of payment from an appellant or on the appellant's behalf for the attorney's representation of said appellant or for reimbursement of any expenses incurred.
3. The Clerk of the Court of Appeals shall forthwith forward all approved statements to the Administrative Office of the United States Courts for payment.

## **VI.**

### **FORMS**

The forms prepared and furnished by the Administrative Office shall be used, where applicable, in all proceedings under this plan. Any revisions of said forms or any additional forms that may be prescribed by the Administrative Office under the authority of the Judicial Conference of the United States or of the Committee of that Conference to Implement the Criminal Justice Act of 1964, as amended, shall likewise be used, where applicable, in all proceedings under this plan.

## **VII.**

### **RULES AND REPORTS**

The Court shall submit a report on the appointment of counsel under the Act to the Administrative Office of the United States Courts in such form and at such times as the Judicial Conference may specify. This plan shall be subject to such rules and regulations of the Judicial Conference of the United States governing the operation of plans under the Act as may be issued from time to time.

## **VIII.**

### **EFFECTIVE DATE**

This amended plan shall become effective March 27, 1996.

## PART B

### SECOND CIRCUIT GUIDELINES CONCERNING CAMERAS IN THE COURTROOM

Pursuant to a resolution of the Judicial Conference of the United States adopted on March 12, 1996, authorizing each court of appeals to "decide for itself whether to permit the taking of photographs and radio and television coverage of appellate arguments, subject to any restrictions in statutes, national and local rules, and such guidelines as the Judicial Conference may adopt," the Court hereby adopts the following Guidelines:

1. **Exercise of local option.** From the date of these Guidelines until further order of this Court, proceedings of the Court conducted in open court may be covered by the media using a television camera, sound recording equipment, and a still camera (hereafter referred to a "camera coverage"), subject to these Guidelines.
2. **Applicable guidelines.** Camera coverage must be conducted in conformity with applicable statutes, national rules, any guidelines that may be issued by the U.S. Judicial Conference, and these Guidelines of the Second Circuit Court of Appeals.
3. **Eligible proceedings.** Camera coverage is allowed for all proceedings conducted in open court, except for criminal matters. See Fed. R. Crim. P. 53, 54(a). For purposes of these Guidelines, "criminal matters" include not only direct appeals of criminal convictions but also any appeal, motion, or petition challenging a ruling made in connection with a criminal case (such as bail motions or appeals from the dismissal of an indictment) and any appeal from a ruling concerning a post-conviction remedy (such as a habeas corpus petition). Camera coverage is not permitted for pro se matters, whether criminal or civil. On any day when camera coverage is to occur, the Clerk's Office will endeavor to schedule civil and non-pro se matters ahead of criminal and pro se matters. Camera coverage operators will remain seated, away from their equipment, and their equipment will be turned off, during criminal and pro se proceedings.
4. **News media pooling.** Camera coverage will be permitted by any person or entity regularly engaged in the gathering and dissemination of news (hereinafter "news media"). If coverage is sought by more than one person or entity, a pool system must be used (one for still photography and one for radio and television). It will be the responsibility of the news media to resolve any disputes among them as to which personnel will operate equipment in the courtroom. In the absence of an agreement, camera coverage will not be permitted for that day's proceedings. The television pictures, audio signals, and still photographs of court proceedings made

by pool personnel must be made available to any news media requesting them upon payment of a reasonable fee to the employer of the pool personnel to share the costs of the pool personnel.

5. **Educational institutions.** The Court may also authorize the coverage of court proceedings and access to pooled coverage by educational institutions.
6. **Prior notification requirement.** News media interested in camera coverage of any court proceeding must notify the Court's calendar clerk no later than noon two days preceding the day of the proceeding to be covered (*i.e.*, notification must be made by noon on Tuesday to cover a proceeding on Thursday, or by noon Friday for the following Monday). A calendar of the following week's cases is made public by the Court each Thursday. For good cause shown, relief from this notification requirement may be granted by the presiding judge of a panel.
7. **Discretion of Panel.** The panel assigned to hear oral argument will retain the authority, in its sole discretion, to prohibit camera coverage of any proceeding, and will normally exercise this authority upon the request of any member of the panel.
8. **Technical restrictions.** Only two television cameras and one still camera will be permitted in the courtroom. The television cameras and the still camera must each be mounted on a tripod and remain at a fixed location along a side wall of the courtroom throughout the proceeding. The still camera must either be capable of silent operation (shutter and film advance) or be enclosed in a sound-muffling device (so-called "blimp"). No artificial lighting is permitted. An unobtrusive microphone may be mounted at the attorney's lectern and in front of each judge. A sound technician may be present in the courtroom with unobtrusive sound-mixing equipment. The Clerk's Office will designate a location for a device outside the courtroom to enable news media to obtain "feeds" of video and audio signals. All camera coverage equipment must be set up prior to the opening of a day's proceedings and may not be removed until after the conclusion of the day's proceedings. If done unobtrusively, film used by the still camera operator and film or tape used by the video camera operator may be removed from the courtroom at the conclusion of the oral argument of a particular case. Operators of camera coverage equipment in the courtroom will wear business attire.

When operational, the Court's videoconferencing equipment may be used for purposes of camera coverage.

9. **Authority of presiding judge.** The presiding judge of the panel may direct the cessation of camera coverage or the removal of camera coverage personnel from the courtroom in the event of noncompliance with these Guidelines.

**10. Personnel to contact.** The Calendar Team can be reached at (212)857-8595.

Adopted March 27, 1996